

***7 Official Opinions of the Compliance Board 105 (2011)***

**Public Body – Determined not to be: informally created committees appointed by Library President**

**Meeting – Determined not to be a meeting: Mere attendance at another entity’s meeting, at which the public body’s own public business was not considered**

March 10, 2011

*Complainant:*

*Mr. Craig O’Donnell  
Kent County News*

*Respondent:*

*Kent County  
Library Board of Trustees*

The Board has consolidated into one case the complainant’s three complaints that the Board of Library Trustees of the Kent County Library (“Library”) violated the Open Meetings Act (“the Act”) in 2010. The complainant alleged that the Library’s former Board had violated the Act’s procedures for giving notice of meetings, closing meetings, and keeping minutes. In its response, the Library Board, now composed entirely of new members, conceded numerous violations. On February 17, 2011, our counsel held an informal conference, *see* 10-502.5 (e) of the State Government Article (“SG”), with the complainant, the Library’s counsel, and several current trustees. As a result of that conference, only two issues remain open for our consideration:

(1) Whether the Act applies to meetings of the Library Board’s Finance Committee and other committees; and

(2) Whether the Library Board must follow the Act’s procedures when a quorum of the Library’s members attend another public body’s meeting.

We shall address each in turn.

## I

**The Library's Finance Committee****A. Background**

You allege that a quorum of the three-member Finance Committee met privately and without public notice and thereby violated the Act. In its response, the Library denies any such meeting, and it became apparent in the conference that the current Library Board members have no knowledge on the subject. We do not resolve factual disputes and therefore will not address your allegation that the Finance Committee did not follow the Act's procedures. However, in light of both parties' belief that the Finance Committee is a public body subject to the Act, we believe some general observations on the applicability of the Act to future Library Board committees might be helpful.

Our view is premised on the current bylaws, which the Library Board adopted on November, 22, 2010. Those bylaws contain the following provisions on the creation of committees:

1. There shall be such standing committees as the Board may desire. They shall be appointed by the President for one year, and each committee shall consist of a chairman and at least one other member. The President shall be, ex officio, a member of all standing committees.
2. Special committees may be appointed by the President at any time, such committees to serve at the pleasure of the Board.

It does not appear from the information before us that the Finance Committee was created by resolution.

**B. Discussion**

To determine whether the Act applies to a certain event, we first ask, "Is the entity conducting the meeting a public body as that term is defined by the Act?" 6 *OMCB Opinions* 155, 157 (2009). To answer that question, we refer to the definition in § 10-502(h) of the State Government Article ("SG"), which sets forth two "alternative approaches" for determining whether a particular multi-member committee is a "public body." *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299, 323, 910 A.2d 406 (2006); see also 6 *OMCB Opinions* 140, 142-143 (2009). The first approach, set forth in SG 10-502(h)(1)(ii), requires us to look to the "formal mechanism," or legal authority, which created the entity. 6 *OMCB Opinions* at 142-143. The

second approach, set forth in SG 10-502(h)(2), requires us to look to facts such as the person or entity making the appointment. SG 10-502(h)(2) is subject to an exception in SG 10-502 (h)(3) for certain subcommittees.

Under the first approach, an entity is a public body if it “is created by” the State Constitution or statute, local charter or ordinance, executive order of the Governor or the local chief executive authority, or “a rule, resolution, or bylaw ....” SG 10-502(h)(1)(ii). We interpret SG 10-502(h)(1)(ii) literally, that is, to include as a public body a committee created “by” a bylaw or resolution, but not a committee merely created “under” or “as authorized by” a bylaw or resolution. While the distinction we draw between “by” and “under” may seem fine, interpreting 10-502(h)(1)(ii) in such a way as to include every multiple-person entity created “under” the laws and documents listed there would cast such a broad net as to render the second approach unnecessary. That result would be inconsistent with *Carmel Realty*, where the Court of Appeals applied the principle that statutes should not be interpreted so as to render words superfluous and concluded that SG 10-502(h)(2) “introduces a different set of public bodies other than those described in 10-502(h)(1).” 395 Md. at 323-25. To apply 10-502(h)(1), therefore, we simply look at whether one of the listed laws or documents created the entity in question.

On the facts before us, the Library’s bylaws are the only potential “mechanism” for the creation of committees such as the Finance Committee,<sup>1</sup> and they do not themselves create a “Finance Committee” or any other committee. Instead, they authorize the Library Board to create standing committees and the president to create special committees, in both cases without the adoption of a resolution. We conclude that the Library’s Finance Committee, which was not created “by” its bylaws, and which does not appear from the facts before us to have been created “by” resolution, does not constitute a “public body” under the first approach.

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<sup>1</sup> As explained in the Library’s bylaws, the Library Board itself was created by the mechanism of a County law: “The Board of Library Trustees is the governing body for the Kent County Public Library, having been established and supported by the Kent County Commissioners pursuant to [the Education Article of the] Maryland Annotated Code ..., §23-401.” These laws do not create a Finance Committee or other committees.

Under the second approach, SG 10-502(h)(2)(i)<sup>2</sup>, a public body includes:

any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the political subdivision, if the entity includes in its membership at least 2 individuals not employed by the State or the political subdivision....

We need not apply SG 10-502(h)(2), because SG §10-502(h)(3) excludes subcommittees from its definition of “public body.” SG §10-502(h)(3) provides: “‘Public body’ does not include:.. except as provided in paragraph (1) of this subsection, a subcommittee of a public body as defined under paragraph (2)(i) of this subsection....” So, even if the Library Board were to meet the definition of “public body” under SG 10-502(h)(2)(i) (a determination we do not reach), its Finance Committee would not be included in that definition. SG §10-502(h)(3).

### ***C. Conclusion***

We find that the Finance Committee is not a public body subject to the Act. We caution, however, that a committee consisting of four Trustee members – a quorum of the Library Board - would very likely be deemed to act as the Library Board itself, as would a committee of three Trustee members meeting in the presence of a fourth. *See 6 OMCB Opinions* 155, 158 (2009) (finding that the presence of a quorum of Council members at a subgroup meeting “result[ed] in a meeting of the Council”).

## **II**

### **The Trustees’ Attendance at a Meeting Convened by Another Public Body**

#### ***A. Background***

You alleged that the Library Board violated the Act when a quorum of the Library Board’s members attended a meeting of the County Commissioners

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<sup>2</sup> SG 10-502(h)(2)(ii) and (iii) do not pertain to local-government entities. They include as a “public body” the Maryland School for the Blind and certain entities appointed by an entity “in the Executive branch of State government, the members of which are appointed by the Governor,” or by an official subject to such an entity’s “policy direction.”

and discussed library business without following the Act's procedures. The Library responded that the meeting was conducted by the County Commissioners and that the Library Board merely attended without conducting its own business. On the facts presented to us, we do not find a violation of the Act. We shall explain.

### **B. Discussion**

The Maryland courts have addressed whether a public body has conducted a "meeting" within the scope of the Act when a quorum of its members has attended another entity's meeting. See *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980); *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, *cert. denied*, 334 Md. 63 (1994). So have we. See, e.g., 3 *OMCB Opinions* 278 (2003); 1 *OMCB Opinions* 120 (1995). These cases contain useful illustrations of when a public body "meets" within the definition of §10-502(g) and must therefore follow the Act's procedures, and when its members' attendance at another entity's event instead falls under SG 10-503, which excludes from the Act's scope "a chance encounter, social gathering, or other occasion that is not intended to circumvent this subtitle."

In *Rogers*, the Court held without lengthy discussion that the City Council had not conducted a "meeting" when a quorum of its members attended a civic association's meeting to address questions about a possible annexation of property. 287 Md. at 81. That event, the Court concluded, was instead an "other occasion" falling within SG 10-503. In *Ajamian*, a quorum of the County Council attended a closed meeting of the County Democratic Central Committee. 99 Md. App. at 671-72. At that meeting, the Council President responded to a request for a briefing on various councilmanic redistricting plans. A discussion about the plans ensued, and the Central Committee voted to support the plan proposed by the redistricting commission. The Council members neither joined the discussion nor voted. *Id.* The trial court found that there was "no vote," no "deliberation by councilmembers," no "meeting to deliberate and decide," no intention to "evade the law," "no evidence that the law was in fact evaded," and "no factual basis for a finding of violation of [the Act]." *Id.* at 680 (internal punctuation omitted). The Court of Special Appeals upheld those findings of fact, and affirmed the trial court's judgment that the Council had not violated the Act.

In 1 *OMCB Opinions* 120 (1995), we distilled *Ajamian* into these principles:

[M]embers of a public body do not violate the Act merely by attending a meeting of an entity that is not itself subject to the [Act], even if the topic of discussion relates directly to a matter

before the public body. ... The crucial point [of *Ajamian*] was that the Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of the larger group. If interaction among the members of the public body does not occur, and the larger group is not a mere subterfuge to evade the law, no violation occurs.

*Id.* at 121. There, we concluded that various election boards had not violated the statute when a quorum of each had attended a closed meeting of a private association of election personnel, because there was no evidence that any individual board had conducted public business at the meeting. *Id.*

We applied *Ajamian* again in 3 *OMCB Opinions* 278 (2003). There, a quorum of the Commissioners of Queen Anne's County allegedly violated the Act by attending a closed meeting of the county-level Republican State Central Committee. At that meeting, the Council President raised the subject of amending the ordinance on filling Commissioner vacancies and solicited input from the group. Contrasting that conduct to the *Ajamian* Council President's mere response to a request for information, and noting that we lacked facts on the conduct of the other Commissioners, we concluded that the result depended on whether the other Commissioners participated:

If the other Commissioners did not participate, as in *Ajamian*, then the Act did not apply. If, however, other Commissioners did participate, then the situation was outside the reasoning of *Ajamian* and would have been a meeting subject to the Act and violative of it, because of the failure to comply with the Act's various obligations.

*Id.* at 282.

Here, it does not appear that the Library Board "separately conduct[ed] public business, as distinct from the proceedings" of the County Commissioners, when the Library Board attended the County Commissioners' meeting. We accordingly conclude that the Library Board did not itself conduct a "meeting" on that occasion.

### **C. Conclusion**

We conclude that no violation of the Act arose from the attendance of a quorum of the Library Trustees at the County Commissioners' meeting in question. We emphasize, however, that the applicability of the Act to a public body's attendance at another entity's meeting depends on what transpired at the meeting. Here, our determination assumes that the Library Board

members did not interact on separate Library business at the meeting in question.

**III**

**Summary Conclusion**

The Library Board did not violate the Act with respect to either of the issues before us. We commend the parties' participation in the conference and the new Library Board's undertaking to adhere to the Act.

OPEN MEETINGS COMPLIANCE BOARD

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